

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2001-80-T - ORDER NO. 2001-772

SEPTEMBER 17, 2001

IN RE: Application of Dowdy & Rogers Five Star)
Moving and Storage, Inc., 91 Sand Bar Ferry) ORDER GRANTING
Road, Augusta, GA 30901 (Mailing address:) CLASS E CERTIFICATE
Post Office Box 878, Augusta, GA 39093) for)
a Class E Certificate of Public Convenience)
and Necessity to Transport Commodities.)

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of Dowdy & Rogers Five Star Moving and Storage, Inc., 91 Sand Bar Ferry Road, Augusta, GA 30901 (Mailing address: Post Office Box 878, Augusta, GA 30903) (hereafter referred to as "Dowdy & Rogers Five Star Moving" or the "Applicant"). By its Application, Dowdy & Rogers Five Star Moving requests a Class E Certificate of Public Convenience and Necessity to transport household goods. Specifically, Dowdy & Rogers Five Star Moving seeks authority to transport household goods as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in South Carolina.

The Commission's Executive Director instructed Dowdy & Rogers Five Star Moving to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing provided details of the Application and of the requested authority and provided information for public participation in the proceedings

concerning the Application. Petitions to Intervene was filed by Carey Moving & Storage, Inc.; Carey Moving & Storage of Greenville, Inc.; Arrow Moving & Storage, Inc.; and Acme Moving & Storage (collectively referred to as "Intervenors").¹

By letter dated May 1, 2001, counsel for Dowdy & Rogers Five Star Moving requested to downwardly amend the Application to reflect a scope of authority as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Aiken, Edgefield and McCormick Counties,
South Carolina.

A hearing on Dowdy & Rogers Five Star Moving's amended Application was held on August 8, 2001, at 2:30 P.M. in the hearing room at the offices of the Commission. The Honorable William T. Saunders, Chairman, presided at the hearing. Dowdy & Rogers Five Star Moving was represented by Elmer W. Hatcher, Jr., Esquire. Florence P. Belser, Deputy General Counsel, represented the Commission Staff. As a matter of record, Acme Moving & Storage, Inc. had not formally withdrawn its status as an Intervenor in this procedure at the time of the hearing and did not appear at the hearing.

John H. Dowdy, Jr., President of Dowdy & Rogers Five Star Moving, testified on behalf of Dowdy & Rogers Five Star Moving. Patty Vowell, Inspector, testified on behalf of the Commission Staff.

¹ By letter dated May 7, 2001, Carey Moving & Storage, Inc., Carey Moving & Storage of Greenville, Inc., and Arrow Moving & Storage, Inc. notified the Commission of their desire to withdraw as intervenors in this docket. By Order No. 2001-457, dated May 25, 2001, the Commission approved the request of Carey Moving & Storage, Inc., Carey Moving & Storage of Greenville, Inc., and Arrow Moving & Storage, Inc. to withdraw their intervention.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2000) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

...

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2000) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2000) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulation; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2000) defines "Certificate of PC&N" as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(14) (Supp. 2000) defines "Common Carrier by Motor Vehicle" as "any person² which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2000) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a

² 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Regs 103-133 (Supp. 2000) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.³ If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.

³ By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654, to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2000) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

EVIDENCE OF RECORD

Mr. Dowdy, President and sole owner of Dowdy & Rogers Five Star Moving, testified in support of the application. Mr. Dowdy stated that Dowdy & Rogers Five Star Moving currently holds authority from the Georgia Public Service Commission as a mover of household goods in that state. He testified he is operating in good standing in the State of Georgia and is a dues paying member of the Georgia Movers Association and the American Movers Association. Mr. Dowdy offered that he has been providing

moving services in Georgia for approximately a year and a half; his company performed 298 moves in Georgia in the year 2000 and has conducted 404 moves in Georgia through June of this year, 2001.

Mr. Dowdy testified that he became involved in the moving business approximately seven and a half years ago when he started working with Allied. He said he also worked for United during that time and feels those employment experiences helped prepare him to own his own moving business. Mr. Dowdy said he initially decided to own his own business because he saw a tremendous need for a company that would do local moves. Dowdy & Rogers Five Star Moving is located in Augusta, Georgia, and Mr. Dowdy stated he has received a substantial number of telephone calls requesting local moving services by South Carolina residents, especially from individuals who live in the Aiken and North Augusta areas. He stated his office has kept a log of approximately ninety telephone calls requesting local moving services from South Carolina since the first of the year (2001). Thus, the reason for the instant application.

Mr. Dowdy stated that Dowdy & Rogers Five Star Moving currently employs fifteen employees in Georgia, including his two sons and a full time secretary. He testified that he has four crew chief drivers, two of whom have their commercial drivers licenses. He clarified, however, that none of his trucks, when loaded, exceeds the 26,000 pound limit that requires the drivers to hold commercial drivers licenses. Mr. Dowdy further testified that his drivers all have excellent driving records. He said Dowdy & Rogers Five Star Moving currently owns three 26 foot trucks, one 15 foot truck, a pack

van and a pick up truck. Mr. Dowdy said the vehicles are all in good condition and well maintained, with each of the trucks (1995 models) having about 150,000 miles on them.

According to Mr. Dowdy, Dowdy & Rogers Five Star Moving has sufficient financial resources to begin offering local moving services in South Carolina. He said Dowdy & Rogers Five Star Moving's assets currently have a total value of \$76,000, confirmed by the updated financials that were entered into the evidence of the case at the hearing. He said he has acquired two trucks since February, 2001.

With regard to the need for moving services for which the applicant seeks authority, Mr. Dowdy testified he has personal knowledge of the need for local movers in the Aiken/North Augusta area of South Carolina. He cited the number of telephone calls he has received from South Carolina residents requesting his services, and he testified that he believes Aiken County is being neglected as far as having local movers available. Mr. Dowdy also testified that he has good working relationships with Augusta, Georgia, long distance moving companies who refer customers and give him leads for new customers. He said the national franchise moving companies in the Augusta, Georgia, area gave him approximately twenty five moves this summer. Mr. Dowdy said he anticipates being able to fill the obvious need for a local household goods moving company in the Aiken/North Augusta area of South Carolina. As a basis for his opinion, Mr. Dowdy cited his residency in the area, his previous experience in the long distance moving business in Georgia, and his business dealings in the area.

Mr. Dowdy stated that Dowdy & Rogers Five Star Moving recently applied for and received approval for interstate authority from the Interstate Transportation

Commission (ITC). Mr. Dowdy testified that there are no outstanding judgments pending against Dowdy & Rogers Five Star Moving. He further stated that Dowdy & Rogers Five Star Moving is aware of the Commission regulations concerning insurance coverage and currently carries the requisite insurance coverage. Further, Mr. Dowdy affirmed that he is familiar with the rules and regulations of the Public Service Commission of South Carolina and that Dowdy & Rogers Five Star Moving would operate in compliance with the statutes and regulations governing for-hire motor carrier services.

Patty Vowell, an Inspector with the Commission, testified concerning a citation issued to a driver of Dowdy & Rogers Five Star Moving for no PSC intrastate authority. Inspector Vowell stated that a fine was subsequently paid on the ticket. Further, Inspector Vowell stated that she gave an application for authority to the driver, and she followed up with conversations with Mr. Dowdy concerning filing an application for intrastate authority in South Carolina.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant, Dowdy & Rogers Five Star Moving Transportation, Inc., desires to provide moving services of household goods within and between points and places in Aiken, Edgefield and McCormick Counties, South Carolina. This finding of fact is supported by the testimony of Mr. Dowdy and the submission of the Application requesting a Class E Certificate of Public Convenience and Necessity.

2. The Applicant, Dowdy & Rogers Five Star Moving Transportation, Inc., is fit, willing, and able to provide and properly perform the services which it seeks to provide. This finding of fact is based upon the testimony of Mr. Dowdy and the Application submitted requesting the authority. "Fitness" was demonstrated by Mr. Dowdy testifying (1) that the Applicant is aware of the requirement for a safety rating, (2) that there are no outstanding judgments pending against the Applicant, and (3) that the Applicant will operate in compliance with all statutes and regulations pertaining to for-hire motor carrier operations. Further, the application contains (1) a certification that the Applicant is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against the Applicant. "Able" was demonstrated by Mr. Dowdy testifying that the Applicant currently operates a fleet of five trucks in Georgia and has 15 employees who are trained and currently providing the moving services the applicant seeks to offer in South Carolina. Mr. Dowdy also provided evidence establishing that Dowdy & Rogers Five Star Moving possesses the financial wherewithal necessary to conduct for-hire motor carrier operations in South Carolina. Further, Mr. Dowdy testified that the Applicant is aware of the Commission's insurance requirements and provided testimony that Dowdy & Rogers Five Star Moving already has the requisite insurance coverage. "Willingness" was demonstrated by the filing of the Application and the testimony of Mr. Dowdy indicating the Applicant's desire to undertake this business venture.

3. The services proposed by Dowdy & Rogers Five Star Moving are required by the public convenience and necessity. This finding of fact is based upon the testimony

of Mr. Dowdy. As a resident and business owner in the Augusta, Georgia, area, Mr. Dowdy stated that he is aware of the need for moving services as evidenced by the number of telephone calls he has received from South Carolina residents in the Aiken/North Augusta area requesting his services for local moves and his personal knowledge as a mover of household goods in Georgia.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the Dowdy & Rogers Five Star Moving has demonstrated through the Application and the testimony presented that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp.2000).
2. The Commission concludes that Dowdy & Rogers Five Star Moving has sufficiently demonstrated through its presentation that the public convenience and necessity in the area in which the Applicant proposes to serve requires the services proposed by Dowdy & Dowdy Five Star Moving.
3. Based on the conclusions above, that Dowdy & Rogers Five Star Moving has demonstrated that it meets the requirements of fit, willing, and able and that Dowdy & Rogers Five Star Moving has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted to Dowdy & Rogers Five Star Moving with the authority to provide for the movement of household goods within and

between points and places in Aiken, Edgefield and McCormick Counties, South Carolina. This grant of authority is contingent upon Dowdy & Rogers Five Star Moving complying with all Commission regulations, and this grant of authority is not effective until such time as Dowdy & Rogers Five Star Moving comes into compliance with the Commission regulations as outlined below.

IT IS THEREFORE ORDERED THAT:

1. The Applicant, Dowdy & Rogers Five Star Moving Transportation, Inc., should be granted a Class E Certificate of Public Convenience and Necessity authorizing Dowdy & Rogers Five Star Moving Transportation, Inc. to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Aiken, Edgefield and
McCormick Counties, South Carolina.

2. Dowdy & Rogers Five Star Moving Transportation, Inc. shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26

(1976), as amended, a Certificate shall be issued to Dowdy & Rogers Five Star Moving Transportation, Inc. authorizing the motor carrier services granted herein.

4. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)